COURT NO. 2

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.173 (S/S) of 2000

Smt. Nimmi Pant W/o Sir Promod Kumar Pant R/o Forest Compound Ramnagar, District Nainital.

.....Peititoner

Versus

1. Director of Education (Basic) Uttaranchal, Dehradun.
2. Zila Basic Shiksha Adhikari, Nainital.

.....Respondents

Sir B.D.U. Upadhyaya, learned counsel for the petitioner.
Learned Standing Counsel for the State.

Dated: 27.11.2007

Hon'ble P.C. Verma, J.

This writ petition has been filed by the petitioner challenging the order dated 24.10.2000 whereby the petitioner was reverted from the post of Assistant Teacher in Senior Basic School to the post of Assistant Teacher in Primary School.

2. The petitioner was appointed as untrained Assistant Teacher in Primary School on 12.10.1991 under the Dying in Harness Rules. A Division Bench of the Allahabad High Court has held in the case of **Ravi Karan Singh** v. **State of U.P. and others** reported in 1999 (17) LCD 641 that the appointment made under the Dying in Harness Rules is a regular appointment. This judgment has been followed by this Court in series of judgments, therefore, the appointment of the petitioner as untrained Assistant Teacher in Primary School is a

regular one. Vide Government Order dated 20.08.1997, which is contained in Annexure-3 to the counter affidavit, Government has granted exemption of B.T.C. training required qualification for appointment of Assistant Teacher. The Government says that those who have put in five years of service from their initial appointment shall be exempted from training of B.T.C. and shall be treated as regular trained teacher. The name of the petitioner figures at serial no.11, the date of birth and date of initial appointment shown in the list are 18.02.1971 and 31.11.1991 respectively. Thus, from the date of initial appointment, the petitioner had completed five years of qualifying service on the date of issuance of notification and after exemption she become qualified in terms of the Government Order.

3. Learned Standing Counsel submitted that since the exemption has been granted vide Government Order dated 20.08.1997, therefore, she will be entitled only to get the benefit of trained teacher only w.e.f. 20.08.1997.

4. Argument of the learned Standing Counsel is misplaced. Had the intention of the Government Order been that the benefit would be given only with effect from 20.08.1997, it would been clearly mentioned therein. Para first could have been sufficient for granting the exemption to those who have completed five years from the date of their initial appointment, but since the date of initial appointment has been shown in the Government Order, therefore, the exemption will relate back to the date of initial appointment otherwise for the five years the appointment will continue to be illegal. An

irregularity can be regularized but the illegality cannot be cured by such Government Orders. Therefore, the exemption will relate back to the date of initial appointment. Thus, counting the experience of promotion to the post of Assistant Teacher of Primary School to the post of Assistant Teacher in the Junior High School from 13.11.1991, the petitioner became eligible to be promoted in the year 1996. Though the petitioner was promoted in the year 2000, the District Basic Education Officer did not appreciate this fact and pass the reversion order on a misconceived ground that she had not completed five years of qualifying service. Since she was promoted and rule for promotion is seniority subject to condition of unfit, therefore the petitioner was suitable to be promoted and she was rightly promoted and the reversion order was passed only on the ground that the petitioner has not completed qualifying service counting it from 20.08.1997. Since this Court has already held that the exemption will relate back from the date of initial appointment, therefore the petitioner had completed qualifying service on the date of promotion.

5. Learned counsel for the Petitioner has relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Shitla Prasad Shukla** v. **State of U.P. and others** reported in 1986 (Supp) SCC 185. The fact of that case was that the petitioner applied for exemption and exemption was granted to him and in that case Hon'ble Supreme Court has said that the qualifying service shall be counted from the date of grant of exemption. It was not a policy decision of the Government like in the present case. Here a policy

decision relating to the appointees under Dying in Harness Rules is contained in the Government Order dated 20.08.1997 granting exemption to all and that constitutes a separate class by itself.

6. For the reasons recorded above, the order of reversion cannot be sustained and is liable to be quashed. Accordingly, the writ petition is allowed and writ of certiorari is issued. The impugned order dated 24.10.2000 is quashed. The petitioner shall be allowed to continue as Assistant Teacher in Senior Basic School i.e. Junior High School.

(P.C. Verma, J.)

27.11.2007
RBS